IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3708 of 2017

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Reliance Communication Limited, a Company registered under the Companies Act, 1956 having its office at 7th and 8th Floor, Kanshi Palace, P.O Bankipore P.S. Kotwali New Dakbunglow Road, District, Patna through its Authorized Signatory Praveen Kumar Son of Shri R.C. Choudhary, resident of CC/66, P.C. Colony, Kankarbagh, P.O. & P.S., Kankarbagh, District-Patna.

... ... Petitioner/s

Versus

1. The State Of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikash Bhawan, Bailey Road, Patna.
2. Assistant Commissioner of Commercial Taxes, Patliputra Circle, Patna.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. D.V. Pathy,
Mr. Sadashiv Tiwari,
Mrs. Manju Jha, Advocates
For the Respondent/s : Mr. Vikash Kumar, SC 11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

10 03-03-2020 Petitioner has prayed for following reliefs:-

> "i) The order dated 28.02.2017 (as contained in Annexure-1 series), for the period 2011-12 passed by the respondent no. 2 under Section 31 of the Bihar Value Added Tax Act, 2005 be quashed.
>
> ii) For granting any other relief(s) to which the petitioner is otherwise found entitled to."

Learned counsel states that the impugned order dated 28.2.2017 was passed without compliance of the principles of natural justice.

We are not in agreement with the submissions made on behalf of the petitioner for ex facie it cannot be said that the impugned order dated 28.2.2017 was passed without compliance of the principles of natural justice.

Shri Vikash Kumar, learned Standing Counsel, invites our attention to the judgment passed by Hon'ble the Apex Court, reported in (2014) 1 SCC 603 (titled as Commissioner of Income Tax & Ors. Vs. Chhabil Das Agarwal), more specifically paragraph Nos.15 and 16 which are reproduced hereinunder:

> "15. Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titagarh Paper Mills case and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained

> ignoring the statutory dispensation.
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> 16. In the instant case, the Act provides complete machinery for the assessment/ reassessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the Assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In *Ram and Shyam Co. v. State of Haryana* (1985) 3 SCC 267 this Court has noticed that if an appeal is from "Caesar to Caesar's wife" the existence of alternative remedy would be a mirage and an exercise in futility."

Shri Vikash Kumar states that petitioner has a remedy of appeal available under the provisions of Value Added Tax Act, 2005.

As such, liberty is reserved to the petitioner to prefer an appeal so provided under the provisions of Bihar Value Added Tax Act, 2005, as prayed for, on or before 15.4.2020.

Shri Vikash Kumar states that in the event the appeal is filed within the stipulated time, issue of limitation shall not be raised by the State.

The petition is disposed of with the liberty aforesaid clarifying that if the appeal is filed within the stipulated time, the issue of limitation shall not come in the way of the petitioner.

(Sanjay Karol, CJ)

(S. Kumar, J)

Ranjeet/-

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